

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LION RAISINS, INC.,	)	1:09-cv-01900-OWW-SMS
	)	
Plaintiff,	)	<b>SCHEDULING CONFERENCE ORDER</b>
	)	
vs.	)	Motions for Summary Judgment
	)	Filing Deadline: 7/16/10
UNITED STATES DEPARTMENT OF	)	
AGRICULTURE; UNITED STATES	)	Responses to Motions for
DEPARTMENT OF JUSTICE,	)	Summary Judgment
	)	Filing Deadline: 8/13/10
Defendants.	)	
_____	)	Replies to Responses to
	)	Motions for Summary Judgment
	)	Filing Deadline: 8/27/10
	)	
	)	Hearing on Motions for
	)	Summary Judgment:
	)	9/13/10, 10:00am, Ctrm. 3/OWW

1. Date of Scheduling Conference:

February 3, 2010.

2. Appearances of Counsel:

Wesley T. Green, Esq., Corporate Counsel, appeared  
telephonically on behalf of plaintiff.

Assistant United States Attorney Benjamin E. Hall  
appeared on behalf of defendants.

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3. The Pleadings:

A. Summary of the Pleadings.

This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. Plaintiff, a raisin handler, alleges in its Amended Complaint for Declaratory and Injunctive Relief [FOIA] that defendants have improperly withheld records requested by plaintiff under FOIA. The Complaint contains ten counts, summarized briefly as follows:

Count 1. FOIA Log 08-00114, Appeal Log No. 08-00139 and 09-00010: OIG Chain of Custody Records for Seized Shipping Files. Plaintiff alleges that the USDA has wrongfully withheld records relating to custody of export shipping files seized from plaintiff in 2000.

Count 2. FOIA No. 08-1184, Appeal No. 08-2635: DOJ Chain of Custody Records for Seized Shipping Files. Plaintiff alleges that the DOJ has wrongfully withheld records relating to custody of export shipping files seized from plaintiff in 2000.

Count 3. FOIA Request Nos. 92-08; Appeal 3-09: 410 Outside Orders from 1997/1998 (\$1,606.82 Paid Under Protest). Plaintiff alleges that the USDA has wrongfully refused to reimburse plaintiff for \$1,606.82 in search costs relating to Outside Order forms.

Count 4. FOIA Request No. 46-09: 760 Additional Outside Orders (Overpayment of \$746.20). Plaintiff alleges that the USDA has wrongfully withheld Outside Order forms and wrongfully refused to reimburse plaintiff for an overpayment in the amount of \$746.20.

Count 5. FOIA Request No. [Unassigned]: RAC-Retained Certificates. Plaintiff alleges that the USDA has wrongfully

1 withheld records relating to certificates received by the Raisin  
2 Administrative Committee for raisins packed at plaintiff.

3           Count 6. FOIA No. 19-09: Waiver of Conflicts Between Mr.  
4 Blevins and Mrs. Carroll-Blevins. Plaintiff alleges that the USDA  
5 has wrongfully withheld records relating to waivers of conflict of  
6 interest between USDA attorney Colleen A. Carroll and former  
7 Agricultural Marketing Service Compliance Officer G. Neil Blevins.

8           Count 7. FOIA No. [Unassigned]: Former USDA Employees  
9 Retained to Work on Lion Cases. Plaintiff alleges that the USDA  
10 has wrongfully withheld records relating to retention of former  
11 USDA employees to work on matters relating to plaintiff.

12           Count 8. FOIA No. [Unassigned]: Notice Restoring USDA  
13 Inspection Service to Debarred Companies. Plaintiff alleges that  
14 the USDA has wrongfully withheld records relating to the withdrawal  
15 or restoration of USDA inspection services for other raisin  
16 handlers.

17           Count 9. FOIA No. 59-09: Electronic Records of  
18 Certificate Worksheets. Plaintiff alleges that the USDA has  
19 wrongfully withheld electronic records of Certificate Worksheets.

20           Count 10. FOIA No. 09-00136: OIG Reports. Plaintiff  
21 alleges that the USDA has wrongfully withheld records relating to  
22 an Office of Inspector General Report of Investigation dated May  
23 14, 2001.

24           Plaintiff requests that the Court order defendants to  
25 disclose and provide physical access to records, reimburse funds to  
26 plaintiff, and award plaintiff its costs and attorneys' fees.

27           Defendants admit that plaintiff has submitted various  
28 FOIA requests; that records have been produced in response to some

1 of those requests; that other records were not located despite  
2 reasonable searches; deny that they have improperly withheld  
3 records or funds from plaintiff; deny each and every allegation of  
4 improper conduct and bad faith; deny that plaintiff is entitled to  
5 any relief whatsoever; and, request that the Complaint be dismissed  
6 with prejudice.

7 B. Orders Re: Amendment of Pleadings.

8 No amendments are proposed at this time.

9 4. Factual Summary:

10 A. Admitted Facts which are deemed proven without  
11 further proceedings.

12 (1) Plaintiff is a raisin handler and is regulated  
13 by a federal marketing order.

14 (2) The USDA provides inspection and grading  
15 services.

16 (3) The USDA's Agricultural Marketing Service  
17 commenced an investigation of plaintiff, and a search warrant was  
18 executed at plaintiff in October of 2000.

19 (4) The USDA commenced administrative proceedings  
20 to debar plaintiff from inspection services; and, while those  
21 proceedings have been pending, plaintiff has submitted numerous  
22 FOIA requests.

23 (5) Plaintiff has filed appeals from the USDA's  
24 responses to various FOIA requests.

25 B. Contested Facts.

26 (1) All other factual matters.

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1           5.    Legal Issues:

2               A.    Uncontested.

3                   (1)    Venue

4               B.    Contested.

5                   (1)    All other legal issues.

6           6.    Consent to Magistrate Judge Jurisdiction:

7               This case will not be assigned for all purposes,  
8 including trial, to the Honorable Sandra M. Snyder, United States  
9 Magistrate Judge, as the parties do not so consent at this time.

10          7.    Corporate Identification Statement:

11               Any non-governmental corporate party to any action in  
12 this court shall file a statement identifying all its parent  
13 corporations and listing any entity that owns 10% or more of the  
14 party's equity securities. A party shall file the statement with  
15 its initial pleading filed in this court, and shall supplement the  
16 statement within a reasonable time of any change in the information.

17          8.    Discovery Plan:

18               Because this is a FOIA case, it will proceed to summary  
19 judgment without discovery. However, plaintiff may request that  
20 the Court authorize discovery following the parties' briefing on  
21 summary judgment.

22          9.    Motion Schedule:

23               The parties shall file motions for summary judgment by  
24 July 16, 2010, responses thereto by August 13, 2010, replies  
25 thereto by August 27, 2010, for a hearing on September 13, 2010 at  
26 10:00 a.m. in Courtroom No. 3 on the Seventh Floor before the  
27 Honorable Oliver W. Wanger, United States District Judge. Local  
28 Rules 230 and 260.

**Motions for Summary Judgment or Summary Adjudication**

Prior to filing a motion for summary judgment or motion for summary adjudication, the parties are **ORDERED** to meet, in person or by telephone, and confer to discuss the issues to be raised in the motion.

The purpose of the meeting shall be to: (1) avoid filing motions for summary judgment where a question of fact exists; (2) determine whether the respondent agrees that the motion has merit in whole or in part; (3) discuss whether issues can be resolved without the necessity of briefing; (4) narrow the issues for review by the Court; (5) explore the possibility of settlement before the parties incur the expense of briefing a summary judgment motion; (6) arrive at a joint statement of undisputed facts.

The moving party shall initiate the meeting and provide a draft of the joint statement of undisputed facts. In addition to the requirements of Local Rule 260, the moving party shall file a joint statement of undisputed facts.

In the notice of motion, the moving party shall certify that the parties have met and conferred as ordered above or set forth a statement of good cause for the failure to meet and confer.

10. Settlement Conference:

Global settlement negotiations are ongoing between the USDA and plaintiff. If such a settlement is reached, it is expected to include all pending FOIA litigation, including this lawsuit. Should the parties desire a Settlement Conference, they will jointly request one of the Court, and one will be arranged.

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1 11. Request for Bifurcation, Appointment of Special Master,  
2 or other Techniques to Shorten Trial:

3 Not applicable at this time.

4 12. Related Matters Pending:

5 Another FOIA lawsuit entitled *Lion Raisins, Inc. vs.*  
6 *United States Department of Agriculture*, 1:08-cv-00358-OWW-SMS,  
7 also relating to raisin inspection records, remains pending.

8 13. Compliance with Federal Procedure:

9 The Court requires compliance with the Federal Rules of  
10 Civil Procedure and the Local Rules of Practice for the Eastern  
11 District of California. To aid the Court in the efficient  
12 administration of this case, all counsel are expected to  
13 familiarize themselves with the Federal Rules of Civil Procedure  
14 and the Local Rules of Practice for the Eastern District of  
15 California, and to keep abreast of any amendments thereto (**revised**  
16 **December 1, 2009**). The Court must insist upon compliance with  
17 these Rules if it is to efficiently handle its increasing caseload.  
18 Sanctions will be imposed for failure to follow the Rules as  
19 provided in both the Fed.R.Civ.P. and the Local Rules.

20 14. Compliance with Electronic Filing Requirement:

21 On January 3, 2005, the United States District Court for  
22 the Eastern District of California became an electronic case  
23 management/filing district (CM/ECF). Unless excused by the Court,  
24 or by Local Rule, attorneys shall file all documents electronically  
25 as of January 3, 2005, in all actions pending before the court.  
26 While Pro Se Litigants are exempt from this requirement, the court  
27 will scan in all documents filed by pro se litigants, and the  
28 official court record in all cases will be electronic. Attorneys

1 are required to file electronically in pro se cases. More  
2 information regarding the Court's implementation of CM/ECF can be  
3 found on the court's web site at [www.caed.uscourts.gov](http://www.caed.uscourts.gov), including  
4 the Local Rules effective January 3, 2005, and amended December 1,  
5 2009, the CM/ECF Final Procedures, and the CM/ECF User's Manual.

6 While the Clerk's Office will not refuse to file a  
7 proffered paper document, the Clerk's Office will scan it and, if  
8 improperly filed, notify the Court that the document was filed in  
9 an improper format. An order to show cause (OSC) may be issued in  
10 appropriate cases regarding an attorney's disregard for the  
11 requirement to utilize electronic filing, or other violations of  
12 these electronic filing procedures. See L.R. 110, L.R. 133(d)(3).

13 All counsel must be registered for CM/ECF. On-line  
14 registration is available at [www.caed.uscourts.gov](http://www.caed.uscourts.gov). Once  
15 registered, counsel will receive a login and password in  
16 approximately one (1) week. Counsel must be registered to file  
17 documents on-line. See L.R. 135(g). Counsel are responsible for  
18 knowing the rules governing electronic filing in the Eastern  
19 District. Please review the Court's Local Rules effective January  
20 3, 2005, and amended December 1, 2009, available on the Court's web  
21 site.

22 15. Effect of this Order:

23 The foregoing Order represents the best estimate of the  
24 Court and counsel as to the agenda most suitable to bring this case  
25 to resolution. If the parties determine at any time that the  
26 schedule outlined in this Order cannot be met, counsel are ORDERED  
27 to notify the Court *immediately* so that adjustments may be made,  
28 either by stipulation or by subsequent status conference.



1           Stipulations extending the deadlines contained herein  
2 will not be considered unless accompanied by affidavits or  
3 declarations and, where appropriate, attached exhibits which  
4 establish good cause for granting the relief requested.

5           **FAILURE TO COMPLY WITH THIS ORDER SHALL RESULT IN THE**  
6 **IMPOSITION OF SANCTIONS.**

7  
8 IT IS SO ORDERED.

9 **Dated: February 5, 2010**

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE